

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL FILE NO. 3:17-CV-37
(CONSOLIDATED WITH CIVIL FILE NO. 3:17-CV-46)

UNITED STATE OF AMERICA ex rel.)	
TARYN HARTNETT, and DANA SHOCHED,)	
)	
Plaintiff,)	
)	
v.)	DEPOSITION OF MANOJ KUMAR
)	
PHYSICIANS CHOICE LABORATORY)	
SERVICES, DOUGLAS SMITH, PHILIP)	
MCHUGH AND MANOJ KUMAR,)	
)	
Defendants.)	

On Friday, October 16, 2020, commencing at 8:42 a.m., the deposition of Manoj Kumar was taken on behalf of the Plaintiff at the US Attorney's Office, Carillon Building, 227 West Trade Street, Suite 1650, Charlotte, North Carolina, and was attended by Counsel as follows:

APPEARANCES:

KATHERINE T. ARMSTRONG, ESQ.
Assistant United States Attorney
US Attorney's Office
227 West Trade Street, Suite 1650
Charlotte, North Carolina 28202
on behalf of the Plaintiff

BO CAUDILL, ESQ.
MATTHEW M. VILLMER, ESQ.
Weaver, Bennett & Bland, PA
196 North Trade Street
Matthews, North Carolina 28105
on behalf of the Defendant Philip McHugh

(Appearances continue)

1 A Yes, ma'am.
2 Q What do you do?
3 A A manage a group of clinics in Asheville.
4 Q Asheville, North Carolina?
5 A Yes, ma'am.
6 Q What types of clinics do you manage?
7 A They are pain clinics.
8 Q When you say manage, just talk to us generally
9 about your roles and responsibilities.
10 A Administrative role.
11 Q What does that mean?
12 A Hiring people, making sure the clinics are
13 running okay, all facilities are available for
14 the clinicians. Typically that's the role.
15 Q Do you have any other prior work experience
16 managing medical practices?
17 A Yes, ma'am.
18 Q Tell me about that.
19 A In Indiana it was called Pain Management
20 Centers of Southern Indiana and then it was
21 Texas Pain Institute in Dallas. In between
22 that I've given guidance to a couple of
23 physicians, not as a full-time employee but
24 just as a consultant.
25 Q Great. When were you working or providing

1 services for the Pain Management Centers of
2 Southern Indiana?
3 A From 2005 to like 2009 -- 2010. Sorry, 2010.
4 Q Sure, thank you. What type of practice was
5 the Pain Management Centers of Southern
6 Indiana?
7 A It was a pain group, ma'am.
8 Q Was that one office location or multiple?
9 A It had multiple locations.
10 Q Was there a physician who ran that practice?
11 A The owner is the physician.
12 Q Who was that?
13 A His name was Dr. Kamal Tiwari.
14 Q What was your title when you were working for
15 Pain Management Centers of Southern Indiana?
16 A It started as HR manager and then after it
17 became manager in the last, I would say, one
18 year.
19 Q Were you a W2 employee for that practice?
20 A Yes, ma'am.
21 Q In your role as manager for Pain Management
22 Centers of Southern Indiana, what types of
23 duties did you perform?
24 A All administrative duties.
25 Q In the context of Pain Management Centers of

1 Southern Indiana, give us some examples of
2 administrative duties.
3 A Oversee billing, talk to contractors, hiring
4 people, making sure facilities are running,
5 making schedules.
6 Q Were you involved in any way, while you were a
7 manager of Pain Management Centers of Indiana,
8 in the laboratories referral of urine drug
9 testing to outside labs?
10 A No, ma'am.
11 Q Why did you end up leaving the practice in
12 2010?
13 A It got closed down.
14 Q Why did it get closed down?
15 A Because the owner-physician was indicted for
16 doing too many -- various reasons, one of
17 which was doing too many procedures.
18 Q Do you recall what happened in his criminal
19 case?
20 A He went to prison for a short period of time.
21 I did not know how much.
22 Q Did the practice cease operating at that point
23 when Dr. Tiwari was indicted?
24 A Yes, ma'am.
25 Q When did you work for Texas Pain Institute in

1 Dallas?
2 A From 2015, March-April onwards, till 2018
3 January, end.
4 Q What type of services did you provide for that
5 pain clinic?
6 A Similar administrative services.
7 Q What you've already described to us, billing,
8 contractors, etcetera?
9 A Yes, ma'am.
10 Q Were you involved in any way with Texas Pain
11 Institute's referral of urine drug testing to
12 laboratories?
13 A They had -- we had an internal lab. So there
14 was nothing going out.
15 Q But did Pain Management Centers of Southern
16 Indiana have an in-house lab?
17 A It did not have an in-house lab.
18 Q Did Pain Management Centers of Southern
19 Indiana send all of its patient samples out to
20 other laboratories for urine drug testing?
21 A Yes, ma'am.
22 Q Do you recall what laboratories that Pain
23 Management Centers of Southern Indiana
24 physicians were referring to?
25 A It was a laboratory based out of Indianapolis.

1 A Geographical area.
 2 Q What was your geographical area?
 3 A Indiana. That's where I was at that time.
 4 Q Were you living in Indiana at that point?
 5 A Yes, ma'am.
 6 Q Did MK Land Holdings end up getting sales reps
 7 working under it?
 8 A It did, one or two. I do not recall how much
 9 business they were able to drum up.
 10 Q Do you recall their names?
 11 A No, ma'am.
 12 Q Did you approach PCLS about working as a sales
 13 representative or manager or did someone from
 14 PCLS approach you?
 15 A I do not recall, ma'am.
 16 Q Who at PCLS was involved in negotiating this
 17 independent contractor agreement with MK Land
 18 Holdings?
 19 A I used to talk to only two people at PCLS and
 20 I do not recall who talked about the contract
 21 and how much, but the two people were Marcus
 22 Sowinski and Phil McHugh.
 23 Q When did you first meet Marcus Sowinski?
 24 A In 2008 or 2009. I'm not sure right now.
 25 Q Where did you meet him?

1 A No, ma'am, it's very long back.
 2 Q Why did they invite you to come see this
 3 system?
 4 A They were doing regular sales. I guess that's
 5 why they invited me, because they saw the -- I
 6 presumed they realized that we had a large
 7 practice and it can be successful.
 8 Q Did the Pain Managements Centers for Southern
 9 Indiana ever end up doing a prescription
 10 dispensing system in-house?
 11 A No, ma'am.
 12 Q Do you remember the name of the clinic where
 13 you went to see the demonstration?
 14 A No, ma'am.
 15 Q When was the first time you spoke to Phil
 16 McHugh?
 17 A I do not recall the date and -- maybe 2008 or
 18 '09, somewhere around that time. I don't
 19 recall when.
 20 Q What were the circumstances of you meeting Mr.
 21 McHugh?
 22 A I do not recall, ma'am. The only thing I have
 23 a hazy memory and what I can put together is
 24 that at Pain Management Centers of Southern
 25 Indiana at that time urine drug testing cups

1 A Florida.
 2 Q What were those circumstances of that meeting?
 3 A While working for Pain Management Centers of
 4 Southern Indiana, Marcus and Phil and the head
 5 of the -- which I was given to understand at
 6 that time a partner or doctor -- were setting
 7 up a prescription dispensation in a
 8 physician's office. And I was invited out
 9 there to see how it works and that's how --
 10 that's the first time I met Marcus Sowinski.
 11 Q What do you mean by a prescription
 12 dispensation system?
 13 A When you go to a doctor's office, they write a
 14 prescription to you and then you go to a
 15 pharmacy and get it filled. So at that time
 16 it was new that you have a pharmacy within the
 17 clinic itself and you could dispense the
 18 prescriptions right there and then.
 19 Q Who invited you to come see this prescription
 20 dispensing system?
 21 A I'm hazy on how it happened and which one it
 22 was, but I used to talk to only two people,
 23 Marcus and Phil.
 24 Q So you don't recall who invited you to go see
 25 the system?

1 were being utilized as a source for immediate
 2 qualitative results and that is something --
 3 those cups were something Phil was selling. I
 4 do not know how we got -- how he came to know
 5 about me or who introduced us. So that is the
 6 first time I met him and he assisted us in
 7 procuring the cups for our clinic and doing --
 8 guided the staff. He came and visited once to
 9 guide us in how it should be done.
 10 Q Just to confirm, when you say we, you're
 11 talking about the Pain Management Centers ---
 12 A Yes, ma'am.
 13 Q Thank you, of Southern Indiana?
 14 A Yes, ma'am.
 15 Q Do you remember the year when Mr. McHugh came
 16 and, as you described, showed your staff how
 17 to use the cups at Pain Management Center?
 18 A No, ma'am.
 19 Q Do you know if Mr. McHugh was an owner of PCLS
 20 at the time he came to the clinic with the
 21 cups?
 22 A From what I know, PCLS did not exist at that
 23 time.
 24 Q What's your understanding of when PCLS came
 25 into existence?

1 A Like I said, there were only two people I
2 talked to and I can not say who exactly it
3 was, but it was just the two of them I talked
4 to.

5 Q If you will, turn to the second page of the
6 email. I'm looking at Paragraph -- Point 2,
7 Sales. The first sentence indicates that you
8 are not seeking new physicians and there are
9 those that you have already signed on. What
10 do you mean by that?

11 A I do not recall what I meant at that time, but
12 after reading it, it appears that I had
13 already signed on one or two clients. Who
14 they were, I do not know. I don't remember.

15 Q Who were you referring to when you state,
16 "Those that I personally know and could
17 possibly influence in some way"?

18 A Possibly the doctors who called me to ask me
19 things and these I've elaborated later. For
20 example, the family practices in Arkansas who
21 is communicating with me on EMIRS. I think
22 that should be EMRs. There was another doctor
23 who had split from Pain Management Centers and
24 had started his practice in Columbus, Indiana.
25 He was talking to me. So there were a couple

1 will go the way I advise"?

2 A I can't really say what I meant that time,
3 ma'am, because I was consulting with him. So
4 I was telling him pros and cons about
5 different things and -- but the decision is of
6 the physician. So I think it was just a
7 figure of speech.

8 Q Were you advising Dr. Shah on urine drug
9 testing laboratories?

10 A Not advising, presenting them to him because
11 he was aware of the others as well. He was
12 aware of (inaudible) and comprehensive pain
13 consultants we were sending. He had other
14 laboratories coming to talk to him about it
15 and I also presented it to him.

16 Q What other laboratories did he have coming to
17 talk to him about urine drug testing?

18 A Definitely the ones that was giving --
19 providing services in comprehensive -- not --
20 Pain Management Centers of Southern Indiana.
21 I'm not recalling the name of the Indiana,
22 Indianapolis-based -- the lab. Then
23 Millennium was there everywhere and is
24 everywhere, Quest. There are a bunch -- AGES
25 -- there are a bunch of labs. I mean, these

1 of them who used to talk to me, but --
2 possibly that was what I meant. I do not
3 recall what I -- what was in my mind at that
4 time ten years back, ma'am.

5 Q What did you mean by "could possibly influence
6 in some way"?

7 A I think that's more of a sales talk because --
8 how you present and how well you present is --
9 you -- as a sales person, you portray the best
10 side about whatever you are trying to sell.
11 So that's just a figure of speech, ma'am.

12 Q Possibly influenced to do what?

13 A I can not say what I meant that time, ma'am.
14 I really can not.

15 Q Were you referring to your role as a sales
16 representative in selling doctors on PCLS'
17 urine drug testing?

18 BY MR. CAUDILL:
19 Objection. He says he doesn't remember.
20 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:
21 Q You can answer.
22 A I really do not know what I meant at that
23 time, ma'am, because the decisions of are the
24 physician himself.
25 Q What did you mean when you said, "Shah, who

1 labs keep going to -- their reps whose job is
2 to go to doctors' offices and plan
3 (inaudible).

4 Q What is MD Logic?

5 A I think that is an EMR, but I'm not sure.

6 Q When you were presenting urine drug testing
7 options to Dr. Shah, were you also at that
8 time working as a sales representative for
9 PCLS?

10 A Possibly, yes. I'm not sure on the time when
11 I started providing services to Dr. Shah.

12 Q Did you ever tell Dr. Shah that your company
13 MK Land Holdings had entered into an
14 independent contractor agreement with PCLS?

15 A I do not recall distinctly whether it was, but
16 I've always been open about wherever I work to
17 let them know that I am working with somebody
18 else as well. So I must have -- must have
19 informed them that I'm working with PCLS also.

20 Q I know you said you must have, but sitting
21 here today you don't recall?

22 A I do not, ma'am.

23 BY MR. CAUDILL:
24 Objection to the form. You can answer.
25 BY THE DEPONENT:

1 Dr. Shah.
2 Q So when you stated earlier that the reason Dr.
3 Shah and Avicenna were not listed on Schedule
4 C could be that the practice had stopped
5 operating, that was speculation, correct?
6 A Yes, ma'am, I said it could be.
7 Q Going back to Page 2 of the employment
8 agreement which is Exhibit 4, there's a
9 Subparagraph C -- little C. Just take a
10 moment and read that for me to yourself. I
11 didn't mean for you to read it out loud. I'm
12 going to ask you some questions about it.
13 BY MS. OWEN:
14 Which exhibit?
15 BY MS. ARMSTRONG:
16 Four.
17 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:
18 Q Are you through?
19 A Yes, ma'am.
20 Q So Subparagraph C states, "For the period of
21 March 1, 2013, through May 31, 2013, it is
22 expected that Employee bring to a conclusion
23 any and all activities with such clients while
24 working in the capacity as owner of MHS," and
25 it's referring to the clients on Schedule C.

1 A No, ma'am.
2 Q Why not?
3 A I did not go word-by-word.
4 Q Do you know who drafted this agreement?
5 A I do not know who at PCLS drafted it.
6 Q If you flip to Page 10, who signed this
7 employment agreement on behalf of PCLS?
8 A Phil McHugh.
9 Q Keep flipping forward to -- it is Page 1 of
10 Schedule E kind of near the back.
11 A Yes, ma'am.
12 Q I'm paraphrasing here, but there's a paragraph
13 that indicates PCLS has adopted written
14 policies -- certain compliance policies for
15 its personnel. Were you ever provided with
16 any copies of written policies from PCLS?
17 A I don't recall.
18 Q There's also a sales and marketing standard of
19 conduct referenced in Schedule E. Can you
20 tell us what that is?
21 A It is part of the code of ethics, Schedule E.
22 Q Do you recall PCLS' sales and marketing
23 standard of conduct?
24 A Yes, ma'am.
25 Q Was a copy of the sales and marketing standard

1 By May 31, 2013, did MHS stop working with Dr.
2 Masimore's practice?
3 A Once I moved to Charlotte, the only work I was
4 effectively doing for them was payroll.
5 Q I appreciate that. I'm not talking about your
6 work for Dr. Masimore. But Schedules C lists,
7 it appears, several accounts of MHS and this
8 contract states that by May 31st of 2013 MHS
9 cease its activities related to Dr. Masimore's
10 practice, correct?
11 A Yes, ma'am.
12 Q Did that happen?
13 A No, ma'am.
14 Q Why not?
15 A It was my understanding that these -- these
16 clients will continue with MHS. That's why
17 PCLS continued paying for them all the while.
18 Q Did anyone at PCLS discuss this paragraph with
19 you?
20 A No, ma'am.
21 Q Did you read it prior to signing the
22 employment agreement?
23 A No, ma'am.
24 Q Did you read through the agreement generally
25 before signing it?

1 of conduct ever provided to you?
2 BY MR. CAUDILL:
3 Objection to the form.
4 BY THE DEPONENT:
5 I do not recall, ma'am.
6 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:
7 Q Did you read through this Schedule E before
8 you signed the contract?
9 A I don't think so, ma'am.
10 Q Again, why did you not read through Schedule
11 E?
12 BY MR. CAUDILL:
13 Objection to the form. You can answer.
14 BY THE DEPONENT:
15 I have no answer to that, ma'am.
16 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:
17 Q It does look like on the last page, Page 5,
18 that your signature appears here, is that
19 correct?
20 A Yes, ma'am.
21 Q Did your employment with PCLS ever come to an
22 end?
23 A In 2015.
24 Q Do you recall the date and the month in 2015?
25 A No, ma'am.

1 Dr. Johnson's meeting in Pennsylvania?

2 A Dr. Johnson wanted to know about how to set up

3 a laboratory in his office to do presumptive

4 testing. And since I had knowledge about

5 that, I was asked to go and advise him.

6 Q What is presumptive testing?

7 A Analyzer. Presumptive testing could be a

8 urine cup or an analyzer, ma'am.

9 Q Just to simplify it even more, what is

10 presumptive testing? What are you testing

11 when you refer to presumptive testing?

12 A Presumptive testing for urine toxicology.

13 Q Is presumptive testing qualitative or

14 quantitative?

15 A Qualitative.

16 Q Qualitative testing means you're looking for

17 what?

18 A Positives and negatives.

19 Q The presence of a substance?

20 A Or an absence of a substance.

21 Q Did ---

22 A Sorry. The qualification there is that it has

23 a lot of false-positives and false-negatives.

24 Q Presumptive testing does?

25 A Yes, ma'am, and it does not talk about

1 use in his or her practice?

2 A That is something a doctor could set up to use

3 in a -- in his or her practice to reduce the

4 cost or to reduce the number of confirmations

5 that they have to send for.

6 Q What do you mean by confirmations?

7 A Quantitative testing as you had specified.

8 Q What is involved in setting up an analyzer lab

9 in a physician's clinic?

10 A Three aspects are required. The first is a

11 license, the second is a director, and the

12 third is an analyzer.

13 Q Prior to meeting with Dr. Johnson, have you

14 had experience setting up analyzer labs in

15 physician practices?

16 A Yes, ma'am.

17 Q Tell me about that.

18 A For six months I was working with a company

19 called Clinical Lab Services whose job was to

20 set up laboratories in doctors offices -- set

21 up laboratories. They may or may not be in

22 doctors' offices.

23 Q Other than a doctor's office, where would you

24 find an analyzer lab?

25 A In the regular lab also there will be

1 metabolites.

2 Q Dr. Johnson was interested in learning more

3 about a lab to do presumptive testing. Did he

4 reach out to the company, to PCLS, about this?

5 A I was not working with PCLS that time. The --

6 the rep for Dr. Johnson was Elan Colen from

7 Florida and the lead came through him and

8 that's how I got roped in to talk to his

9 client about an analyzer.

10 Q When you say you weren't working at PCLS, you

11 mean you weren't working as a W2 employee at

12 that time?

13 A Yes, ma'am.

14 Q But you were working as a channel partner?

15 A I'm not certain about the time, but it appears

16 so.

17 Q Do you recall anything specific about what Mr.

18 Colen told you about Dr. Johnson's needs?

19 A No, I do not recall specifically what he told

20 me.

21 Q You mentioned analyzers. Tell us more about

22 analyzers. What is an analyzer?

23 A An analyzer is a lab equipment to do amino

24 acid testing.

25 Q Is it something that a doctor could set up and

1 analyzers.

2 Q When were you working for Clinical Lab

3 Solutions -- Solutions did you say?

4 A Clinical Lab -- I do not remember the exact

5 name of the company. It was based out of

6 California. This was four or five months in

7 2010 August to 2011, beginning, something like

8 that, ma'am.

9 Q Did you have any ownership interest in that

10 company?

11 A No, ma'am.

12 Q What specifically was your role with Clinical

13 Laboratory Services?

14 A To coordinate the setting up of a laboratory.

15 Q Prior to joining that company, Clinical Lab

16 Services, did you have any experience in

17 setting up analyzer labs?

18 A No, ma'am.

19 Q How did you get trained to do that?

20 A On-job training.

21 Q During your time with Clinical Laboratory

22 Services, about how many analyzer labs did you

23 work on setting up? Not to completion, just

24 how many analyzer lab projects were you

25 working on?

1 Services to set up the lab for him. He wanted
 2 to buy the -- they would provide the director.
 3 They would set up the lab, that is policies
 4 and procedures, it was certification.
 5 Q What do you recall your involvement being with
 6 Dr. Johnson after he signed up with CLC?
 7 A After he signed up with CLC?
 8 Q I think you just said he would sign up with
 9 CLC or the vendor.
 10 A At that stage, I did not know what -- what
 11 involvement will I have. So my only intention
 12 was to go and meet with him and explain to him
 13 all that was required and present him these
 14 contracts from other companies.
 15 Q Were you providing him with options from
 16 various companies or just CLC?
 17 A I knew of only CLC that time.
 18 Q At this time you were not longer working for
 19 CLC?
 20 A I was not working for CLC that time.
 21 Q Why did Mr. McHugh come to this meeting with
 22 you?
 23 BY MR. CAUDILL:
 24 Objection to form. You can answer.
 25 BY THE DEPONENT:

1 Q Is it possible that he is one of Dr. Johnson's
 2 administrative employees or staff?
 3 A Could be.
 4 Q Do you recall if you ever met or communicated
 5 with Mr. Glenn about the analyzer?
 6 A I communicated a couple of times because he
 7 was the one who was responsible to get the
 8 paperwork and money, etcetera, everything. So
 9 he was my main person to contact.
 10 Q When you met with Dr. Johnson, what was his
 11 response to the information you provided about
 12 setting up an in-house analyzer lab?
 13 A He was very interested in setting it up.
 14 Q Did he have questions about it?
 15 A I don't recall, but he must have had questions
 16 at that time, ma'am.
 17 Q What happened after your initial meeting with
 18 Dr. Johnson in terms of the analyzer lab set-
 19 up?
 20 A I don't distinctly recall, but I do know that
 21 he signed up with the lab setting up company
 22 who started his paperwork for the licensure.
 23 He set up an agreement with me to pay me over
 24 four installments for -- three or four
 25 installments and I was supposed to get paid

1 I do not know why he came. Possibly because
 2 the rep who had referred this account was a
 3 part of the channel partners and Phil at that
 4 time was in charge of marketing or everything.
 5 I do not now. And maybe that is how they had
 6 come to him and that's why he wanted to
 7 participate in that meeting.
 8 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:
 9 Q Again, that was all just conjecture, is that
 10 correct?
 11 A Yes, absolutely.
 12 Q Did you invite Mr. McHugh to this meeting with
 13 Dr. Johnson?
 14 A I think it possibly is the other way around.
 15 I do not know Dr. Johnson. Dr. Johnson has
 16 been sent to me from PCLS.
 17 Q Did you and Mr. McHugh have any conversations
 18 about Dr. Johnson before you met with him in
 19 2012?
 20 A I don't remember, ma'am.
 21 Q Does the name Steve Glenn sound familiar to
 22 you?
 23 A Say it again, ma'am.
 24 Q Steve Glenn, is that familiar?
 25 A I've forgotten the name.

1 three or four thousand dollars to help him get
 2 this all together. We signed an agreement and
 3 he -- I think he sent a first payment. After
 4 that his payment did not come. So it's --
 5 well, it was put in a stall.
 6 Q During your first meeting with Dr. Johnson,
 7 was there any discussion about him sending
 8 samples to PCLS for confirmatory testing?
 9 A No, ma'am.
 10 Q That didn't come up at all during your initial
 11 conversation?
 12 A No, ma'am.
 13 Q At the time you met with Dr. Johnson, was he a
 14 customer of PCLS?
 15 A I do not know, ma'am.
 16 Q Was Elan Colen a sales rep for any other urine
 17 diagnostic testing laboratories that you're
 18 aware of?
 19 A Please say it again.
 20 Q Yes, I want to make sure I understand the
 21 players. Elan Colen was a rep for PCLS, is
 22 that correct?
 23 A He was the rep of another channel partner.
 24 Q Was he also a sales rep for any other urine
 25 drug testing labs?